

## MEMORANDUM

DATE: June 18, 2004

TO: Mr. Brian Peters  
Delaware Lottery Office

FROM: Ms. Rita Landgraf  
Chairperson  
State Council for Persons with Disabilities

RE: Prepublication Lottery Accessibility Regulation

Thank you for sharing the latest draft amendments (attached) to the lottery regulations prior to publication in the Register of Regulations. As background, the State Council for Persons with Disabilities (SCPD) objected to new proposed regulations [7 DE Reg. 270 (September 1, 2003)] which would have permitted applicants for an initial lottery retailer license to obtain exemptions from accessibility requirements. The Architectural Accessibility Board also submitted a December 19, 2003 letter criticizing the proposed availability of accessibility exemptions to both applicants and existing retailers. As a result, the Lottery Office withdrew the proposal pending further study [7 DE Reg. 635 (November, 1, 2003); 7 DE Reg. 1010 (February 1, 2004)].

On February 5, 2004, representatives of the Lottery Office and SCPDs Policy and Law Committee met to discuss the rationale for extending accessibility exemption authority to applicants. The primary concern appeared to be that sites with permanent exemptions periodically change ownership. This requires a new application since lottery licenses are nontransferable. See 4 DE Reg. 498, 500 (September 1, 2000)]. Since existing regulations only permit existing retailers, and not applicants, to qualify for accessibility exemptions, the Lottery Office is losing retailers as ownership of sites change. The primary area of concern appeared to be in Wilmington where there are 139 active retailers and some of these retailers are in older buildings. Of the 21 active retailers with permanent exemptions statewide, 20 are in Wilmington. At the meeting, SCPD suggested the possibility of a compromise in which the sites would be “grandfathered” without adopting a “blanket” authorization for all new applicants to apply for exemptions. The latest draft regulation submitted to the SCPD attempts to fulfill this compromise. (SCPD) has reviewed the latest draft and has the following observations and recommendations.

First, the draft could be improved in Section (6)(a), second sentence, by substituting “a current

retailer” for “the retailer” to reinforce the notion that this exemption is not available to applicants in general. The term “current retailer” is also the terminology used in the heading of Section (5) and in Subsections (5)(b) and (5)(c).

Second, since the 21 exemptions of concern are in 2 contexts, technical infeasibility and legal impediment, the Lottery Office could tailor the scope of the “grandfather” authorization to these 2 bases. This could be achieved in Section (6)(a), second sentence by substituting “ Pars. c) or f) of this section” for “this Regulation”.

Third, the Lottery Office may wish to delete the term “permanent” in Section (6)(f) since it provides a retailer with a legal basis to argue that, once such an exemption is granted, it can never be rescinded even if circumstances change. For example, the retailer’s site may undergo major renovations which remove the “technical infeasibility” of achieving accessibility. None of the other exemption bases, including historic property and legal impediment, are characterized as “permanent”. The deletion would also facilitate implementation of the proposed Section 10 which contemplates reinspections and certifications.

Fourth, consistent with the attached September 29, 2003 letter, there are varying interpretations of the analysis of lottery accessibility under the ADA. The interpretations run the gamut from “all sites must be accessible” to “the program when viewed as a whole must be accessible”.

In summary, SCPDs preference is that all lottery sites should be accessible. However, Council agrees not to object to the proposed amendments if the above 3 recommendations are incorporated in the final draft. The compromise would meet the Lottery Office’s desire to preserve the 21 exempt sites as retailers while meeting the SCPD’s concern that wholesale waivers of accessibility standards not be authorized for applicants.

Thank you for your consideration and the opportunity to collaborate on this issue. Please contact SCPD if you have any questions regarding our observations or recommendations on the proposed revisions to the regulations.

cc: Mr. Tom Cook  
Mr. Wayne Lemons  
Architectural Accessibility Board  
Division of Human Relations  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council  
Ms. Sandra Mifflin